

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

MAURICE NEAL,

Plaintiff,

v.

Case No. 09-13169  
Hon. Lawrence P. Zatkoff

JUDITH A. RADDATZ, ET AL.,

Defendants.

---

**OPINION AND ORDER ADOPTING  
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION AND DISMISSING  
PLAINTIFF'S COMPLAINT**

This matter comes before the Court on Magistrate Judge Whalen's Report and Recommendation [dkt 43], in which the Magistrate Judge recommends that the Court grant Defendant Raddatz's Motion for Summary Judgment [dkt 33] and dismiss Plaintiff's *pro se* Complaint without prejudice. Plaintiff has filed Objections to the Report and Recommendation [dkt 45].

The Court has thoroughly reviewed the court file, the Report and Recommendation, and Plaintiff's Objections. As a result of that review, the Court **OVERRULES** Plaintiff's Objections, **ADOPTS** the Report and Recommendation, and enters it as the findings and conclusions of this Court. The Court, however, will briefly discuss Plaintiff's Objections.

Plaintiff raises one cognizable objection relevant to the Report and Recommendation. Plaintiff contends that the Magistrate Judge erred in noting that Plaintiff has not responded to Defendant Raddatz's Motion for Summary Judgment. According to Plaintiff, he did file a response

by July 15, 2011, to which he attached evidence showing that he exhausted the MDOC's administrative remedies by appealing his grievance to Step III.

The Court first notes, according to the Magistrate Judge's order requiring Plaintiff to file a response, that the Magistrate Judge required Plaintiff to file a response by July 5, 2011, not July 15, 2011, as Plaintiff asserts. Nonetheless, a pleading filed by Plaintiff on June 27, 2011, is titled "Brief in Response" [dkt 35]. This pleading, however, construing it as Plaintiff's response to Defendant Raddatz's Motion, is insufficient to show that the Magistrate Judge erred in concluding that Plaintiff failed to exhaust his administrative remedies under the MDOC's grievance policies by not appealing his grievance to Step III.

Plaintiff's "Brief in Response" contains two typed-pages of statements and several exhibits. The first page refers to objections not relevant to the Magistrate Judge's conclusion. The second page, however, asserts that Plaintiff made an attempt to exhaust his administrative remedies by appealing his grievance to step III. He also claims that the Affidavit of Richard Russell is false because, as indicated in Exhibit J attached to Plaintiff's "Brief in Response," he appealed his grievance to Step III.

Exhibit J is a document titled "Disbursement Authorization/Catalog Order Form," dated August 27, 2009. The blanks on the form have been filled out with Plaintiff's last name and prisoner information. A description of the item requested for "catalog order" is filled out as "Step III Appeal to the Director's Office, P.O. Box 30003, Lansing, MI, 48880." Plaintiff provides no indication as to what this form is used for and only asserts that it is evidence of the fact that he appealed his grievance to Step III.

The Court, however, need not know the precise use of this form to find that the form fails

to show that Plaintiff exhausted his administrative remedies prior to seeking federal relief. It is undisputed that Plaintiff filed this case on August 12, 2009, fifteen days prior to the date that he filled out the form which purportedly indicates that he appealed his grievance to Step III. As such, it is not possible that Plaintiff exhausted the MDOC grievance procedures prior to filing this action. The Court therefore overrules Plaintiff's objection.

Accordingly, IT IS HEREBY ORDERED that Defendant Raddatz's Motion for Summary Judgment [dkt 33] is GRANTED.

IT IS FURTHER ORDERED that Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff  
LAWRENCE P. ZATKOFF  
UNITED STATES DISTRICT JUDGE

Dated: February 15, 2012

#### CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on February 15, 2012.

s/Marie E. Verlinde  
Case Manager  
(810) 984-3290